

301 CMR 41.00: TOXIC OR HAZARDOUS SUBSTANCE LIST

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41.01: Authority and Purpose

- (1) Authority. The Administrative Council On Toxics Use Reduction adopts 301 CMR 41.00 pursuant to M.G.L. c. 21I, §§ 4(C) and 9.
- (2) Purpose. The Administrative Council on Toxics Use Reduction promulgates 301 CMR 41.00 to carry out its authority and responsibility:
 - (a) to promote the coordination and enforcement of federal and state laws and regulations pertaining to toxics production and use, hazardous waste, industrial hygiene, worker safety, public exposure to toxics and the release of toxics into the environment;
 - (b) to coordinate state programs in order to promote, most effectively, toxics use reduction in the Commonwealth;
 - (c) to minimize unnecessary duplication of reporting requirements concerning toxic or hazardous substance production, use, release, disposal, and worker exposure;
 - (d) to provide up-to-date and consistent information about manufacturing, worker exposure, distribution, process, sale, storage, release or other use of toxics on a facility, regional and statewide basis;
 - (e) to adjust the toxic or hazardous substance list under M.G.L. c. 21I, § 9 by adding or deleting substances consistent with the changes on the Toxic Chemical List established pursuant to Section 313 of EPCRA;
 - (f) to adjust the toxic or hazardous substance list under M.G.L. c. 21I, § 9 by retaining or deleting substances listed pursuant to sections 101(14) and 102 of CERCLA and to furthermore adjust the toxic or hazardous substance list by adding or deleting substances consistent with changes to the lists established pursuant to said sections of CERCLA;
 - (g) to designate toxic or hazardous substances as higher hazard substances or lower hazard substances; and
 - (h) to otherwise effectuate the purposes of M.G.L. c. 21I.

41.02: Definitions

Board means the Science Advisory Board of the Toxics Use Reduction Institute at the University of Massachusetts Lowell.

Calendar Year Reporting Period means the calendar year beginning with the month of January and ending with the month of December.

CAS Registry Number or CAS # means that number assigned to a chemical substance by the Chemical Abstract Service.

CERCLA means the Comprehensive Environmental Response Compensation and Liability Act, 42 USC § 9601, *et seq.* (Public Law 92-500).

Council means the Administrative Council on Toxics Use Reduction created under M.G.L. c. 21I, § 4.

Department means the Department of Environmental Protection.

EPCRA means the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 *et seq.* (Public Law 99-499).

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Establishment means an economic unit, generally at a single physical location, where business is conducted or where services or industrial operations are performed.

Facility means all buildings, equipment, structures, and other stationary items which are located on single site or on contiguous or adjacent sites and which are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with, such person. A facility may consist of more than one establishment if the establishments are operated by persons who have a common corporate or business interest (including, without limitation, common ownership or control) in the establishments. If the facility consists of more than one establishment where the establishments are operated by persons who do not have a common corporate or business interest (including, without limitation, common ownership or control) in the establishments, then each such person shall treat the establishments it operates as a facility. For purposes of 301 CMR 41.02: Facility, a "common corporate or business interest" includes ownership, partnership, joint ventures, ownership of a controlling interest in one person by the other, or ownership of a controlling interest in both persons by a third person.

Higher Hazard Substance means a substance designated by the Council as a higher hazard substance pursuant to M.G.L. c. 21I, § 9 and 301 CMR 41.00.

Import means to cause a toxic substance (including a mixture containing a toxic substance) to be imported into the customs territory of the United States. For purposes of 301 CMR 41.02: Import, "to cause" means to intend that the toxic substance be imported and to control the identity of the imported toxic substance and the amount to be imported. For purposes of 301 CMR 41.02: Import, "to cause" includes, without limitation:

- (a) situations where a person orders a toxic substance from a foreign supplier; and
- (b) situations where the person uses an import brokerage firm as an agent to obtain the toxic substance.

Lower Hazard Substance means a substance designated by the Council as a lower hazard substance pursuant to M.G.L. c.21I, § 9 and 301 CMR 41.00.

Manufacture means to produce, prepare, import or compound a toxic or hazardous substance. Manufacture shall also mean to produce a toxic or hazardous substance coincidentally during the manufacture, processing, use or disposal of another substance or mixture of substances, including a toxic substance that is separated from such other substance or mixture of substances as a byproduct, and a toxic substance that remains in such other substance or mixture of substances as an impurity.

Person means any individual, trust, firm, joint stock company, corporation, partnership or association engaged in business or in providing service, excluding the Commonwealth of Massachusetts, and any authority, district, municipality or political subdivision of the Commonwealth of Massachusetts.

Process means the preparation of a toxic or hazardous substance, including, without limitation, a toxic substance contained in a mixture or trade name product, after its manufacture, for distribution in commerce:

- (a) in the same form or physical state, or in a different form or physical state from, that in which it was received by the toxics user so preparing such substance; or
- (b) as part of an article containing the toxic or hazardous substance.

Toxic means toxic or hazardous.

Toxic or Hazardous Substance means a substance in a gaseous, liquid, solid or other form which is identified on the toxic or hazardous substance list established pursuant to M.G.L. c. 21I, § 9 and 301 CMR 41.00, but which will not include any substance when it is:

- (a) present in an article;
- (b) used as a structural component of a facility;
- (c) present in a product used for routine janitorial or facility grounds maintenance;

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- (d) present in foods, drugs, cosmetics or other personal items used by employees or other toxics users at a facility;
- (e) present in a product used for the purpose of maintaining motor vehicles operated by a facility;
- (f) present in process water or non-contact cooling water as drawn from the environment or from municipal sources, or present in the air used either as compressed air or part of combustion;
- (g) present in a pesticide or herbicide when used in agricultural applications;
- (h) present in crude, lube, or fuel oils or other petroleum materials being held for direct wholesale or retail sale; or
- (9) present in crude or fuel oils used in combustion to produce electricity, steam or heat except when production of electricity, steam or heat is the primary business of a facility.

Toxic or Hazardous Substance List means the list of toxic or hazardous substances established pursuant to M.G.L. c. 21I, § 9 and 301 CMR 41.00.

Toxics User means the following:

- (a) any person who owns or operates any facility that manufactures, processes or otherwise uses any toxic or hazardous substance and that is classified in SIC Codes Ten through 14, 20 through 40, 44 through 51, 72, 73, 75 and/or 76, or the corresponding NAICS codes.
- (b) If a person owns a facility, and that person's only interest in the facility is ownership of the real estate upon which the facility is operated, then, with respect to that facility, that person is not a toxics user. This includes, without limitation, owners of facilities such as industrial parks, all or part of which are leased to persons who operate establishments within SIC codes Ten through 14, 20 through 40, 44 through 51, 72, 73, 75 and/or 76, or the corresponding NAICS codes, where the owner has no other business interest in the operation of the facility or establishment.

Toxics Use Reduction Institute or Institute mean the Toxics Use Reduction Institute established pursuant to M.G.L. c. 21I, § 6.

41.03: Toxic or Hazardous Substance List

(1) For calendar year reporting period 2002 and thereafter, the toxic or hazardous substance list shall consist of the substances identified on the toxic chemical list pursuant to section 313 of EPCRA as of January 1, 2002 and the substances listed pursuant to sections 101(14) and 102 of CERCLA as of January 1, 2002, excluding the following substances:

- (a) copper, nickel, chromium, cobalt or manganese in a solid or molten metal alloy, but not including aerosols, where aerosol is defined as airborne particles less than 50 µm in diameter;
- (b) chromium III oxide;
- (c) hydroquinone, provided however that hydroquinone shall not be delisted for toxics users who manufacture hydroquinone;
- (d) acetic acid at concentrations less than or equal to 12%;
- (e) zinc oxide;
- (f) radionuclides;
- (g) silver-copper mixture when contained in an alloy form, but not including aerosols of the alloy where aerosol is defined as airborne particles less than 50 µm in diameter;
- (h) zero valance silver and copper, but not including aerosols of silver-copper alloy where aerosol is defined as airborne particles less than 50 µm in diameter; and
- (i) zinc stearate.

(2) For calendar year reporting period 2002 and thereafter, the toxic or hazardous substance list shall include crystalline silica less than ten microns in size and used in the following processes: abrasive blasting and molding.

(3) For calendar year reporting period 2008, the substances listed pursuant to section 101(14) and 102 of CERCLA as of January 1, 2002, shall be retained on the toxic or hazardous substance list, excluding the substances specified in 301 CMR 41.03(1)(a) through (i).

41.04: Amendment of the Toxic or Hazardous Substance List

(1) The council may amend the toxic or hazardous substance list by adding or deleting substances. The council shall add no more than ten substances in any year. The council shall delete no more than ten substances in any year. Any addition or deletion of a substance shall take effect the calendar year immediately following the year in which the addition or deletion is codified in 301 CMR 41.00.

(2) The council shall adjust the toxic or hazardous substance list each year to add or delete substances consistent with changes in the toxic chemical list established pursuant to section 313 of EPCRA and with changes in the lists of chemicals established pursuant to sections 101(14) and 102 of CERCLA. The council shall make additions and deletions under 301 MR 41.04(2) in addition to any actions it takes under 301 CMR 41.04(1).

(3) In adding or deleting substances under 301 CMR 41.04(1), the council shall consider recommendations from the Toxics Use Reduction Institute and the Science Advisory Board.

41.05: Designation of Higher Hazard and Lower Hazard Substances

(1) The council shall designate substances as higher hazard substances, lower hazard substances, or may leave substances as otherwise uncategorized substances. The council shall designate no more than ten higher hazard substances and no more than ten lower hazard substances in any year. Any designation of a substance as a higher hazard or a lower hazard substance shall not take effect until the calendar year immediately following the year in which the designation is codified in 301 CMR 41.00.

(2) In designating substances as higher hazard or lower hazard substances under 301 CMR 41.04(1), the council shall consult with the Toxics Use Reduction Institute and the Science Advisory Board.

41.06: Higher Hazard Substances

(1) For calendar year reporting period 2008 and thereafter, those substances identified as chemicals of special concern in 40 CFR Part 372.28 shall be designated as higher hazard substances.

(2) For calendar year reporting period 2008 and thereafter, the following substances shall be designated as higher hazard substances:

- (a) Trichloroethylene (CAS # 79-01-6)
- (b) Cadmium (CAS # 7440-43-9)
- (c) Cadmium Compounds

(41.07: Lower Hazard Substances: Reserved)

REGULATORY AUTHORITY

301 CMR 41.00: M.G.L. c. 21I, §§ 4 and 9.